

Schultz



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Electronic Space Systems Corp.
File: B-236006
Date: October 26, 1989

DIGEST

Fact that bid for base quantity line item is higher than option price for same item does not constitute clear and convincing evidence of mistake-in-bid, and downward correction displacing low bidder thus is not warranted, where (1) bid as submitted is in line with the other bids, and (2) agency recognizes that bidding lower price only for option quantity reasonably could have been part of purposeful bidding strategy.

DECISION

Electronic Space Systems Corporation (ESSCO) protests the contracting officer's denial of its request for correction of an alleged mistake in its bid under invitation for bids (IFB) No. DAAB07-89-B-D064, issued by the Army for fabrication and installation of a base quantity of three space frame radomes, and an option quantity of three additional radomes. Radomes are spherical structures used to hold satellite antenna disks. ESSCO contends that the face of its bid clearly establishes both its apparent mistake and its intended bid price. The Army determined otherwise and therefore refused to allow the requested downward correction, which would have displaced another firm's low bid.

We deny the protest.

Line items 0001AA, 0002AA, 0004AA (option), and 0005AA (option) of the IFB requested bids for fabrication of 68-foot radomes. Line items 0003AA and 0006AA (option) requested bids for 48-foot radomes. Three bids were received, as follows (in pertinent part):

046930/139876

<u>CLIN</u>	<u>Nevatech</u>	<u>ESSCO</u>	<u>Antennas</u>
Base			
Quantity			
0001AA(68')	\$167,600	\$146,155	\$140,000
0002AA(68')	167,600	146,155	140,000
0003AA(48')	147,600	146,155	95,000

Option			
Quantity			
0004AA(68')	\$167,600	\$146,155	\$140,000
0005AA(68')	167,600	146,155	140,000
0006AA(48')	147,600	80,951	95,000

Antennas' total bid was low at \$1,062,800 and ESSCO was second low at \$1,067,009. After bid opening, ESSCO alleged a mistake in its bid, correction of which would make its bid lower than Antennas'. The contracting officer denied ESSCO's request for correction because the face of the bid failed to clearly establish ESSCO's apparent mistake or a different intended bid price.

ESSCO principally argues that it intended to bid the same amount for item 0003AA as it bid for item 0006AA, and that the contracting officer should have allowed downward correction of its line 0003AA price from \$146,155 to \$80,951, because the alleged mistake was obvious on the face of the bid, and ESSCO's intended bid for the item is ascertainable from the face of the bid.^{1/} Specifically, ESSCO argues that the mistake is apparent because both line items are for identical 48-foot radomes; ESSCO maintains it should be clear that it intended to bid an identical price for these identical items, and notes that the two other bidders bid the same price for items 0003AA and 0006AA. ESSCO further argues that since items 0003AA and 0006AA are for 48-foot radomes, it would not make sense for it to price item 0003AA at \$146,155, the same price it bid for the larger, 68-foot radome, which has a surface area more than twice that of the 48-foot radome; ESSCO notes that the two other bidders bid a lower price for the smaller radome.

^{1/}ESSCO initially also claimed a similar mistake in its price for item 0003AB, which covered installation of the radomes, but dropped this claim in its comments on the agency's report, conceding that this was not an obvious mistake.

other bidders bid a lower price for the smaller radome. ESSCO concludes that it should receive the award as the low, responsive bidder.

The Federal Acquisition Regulation (FAR) provides for correction of mistakes disclosed before award; however, a downward correction of a bid which results in displacement of a lower bid, the situation here, is permissible only where clear and convincing evidence on the face of the bid establishes both the existence of a mistake, and the intended bid. FAR § 14.406-3(a); Concorde Battery Corp., B-235119, June 30, 1989, 89-2 CPD ¶ 77. The correction must admit to only one reasonable interpretation in light of the range of other bids and the contracting officer's logic and experience. Argee Corp., B-230165.3, May 20, 1988, 88-1 CPD ¶ 482. Our Office will not disturb an agency's determination concerning bid correction unless there is no reasonable basis for the decision. Pierpoint, Inc., B-219855, Oct. 10, 1985, 85-2 CPD ¶ 401.

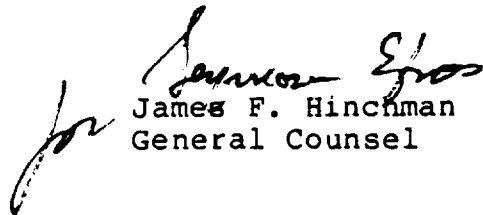
We find that the Army reasonably determined that the strict evidentiary standard for a downward bid correction based on an alleged mistake has not been met here. First, ESSCO's bid of \$146,155 for item 0003AA is not out of the range of bids for that item, but rather is entirely consistent with the other two bids received--\$147,600 and \$95,000. Second, contrary to ESSCO's contention, line items 0003AA and 0006AA are not identical; although both require 48-foot radomes, item 0003AA is part of the basic requirement, while item 0006AA is an option which may or may not be exercised. The contracting officer explains it has been his experience that bidders often price such options lower than the base item as part of a bidding strategy. Specifically, where, as here, both the base and option quantities are to be evaluated, the bidder may purposely allocate additional cost to the base item while reducing the option item price; the total price for both items remains the same, but the contractor will receive a larger portion of the total as part of its initial contract price, a benefit to the contractor, particularly if the option is not exercised. Certainly, the fact that separate line item prices were requested for the base and option items shows that bidders were free to bid different prices for base and option items.

Given the possibility that ESSCO followed this or some other similar bidding strategy, it is irrelevant, we think, that other bidders priced items 0003AA and 0006AA the same; that is, the fact that two bidders followed a bidding approach under which they priced the base and option items the same is not clear or convincing evidence that a third bidder did

not follow a different legitimate approach under which base and option items were not priced the same.

We conclude that the Army reasonably determined that there was not clear and convincing evidence of a mistake in ESSCO's bid and thus properly refused to permit a downward correction that would have displaced the low bid.

The protest is denied.


James F. Hinchman
General Counsel